

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

March 14, 2005

The Honorable Stephen Johnson  
Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Dear Acting Administrator Johnson:

We are writing to reiterate our concern about the EPA's proposed rule on mercury emissions from power plants. We believe that if the EPA issues this rule without the legally required analyses, the Agency will fail to meet Clean Air Act requirements, threaten the credibility of the EPA as one of the primary guardians of the nation's public health, and put the safety of thousands of Americans at risk.

The EPA's Inspector General and the Government Accountability Office (GAO) recently issued separate reports criticizing the EPA's rulemaking process, on the grounds that it violated EPA policy, OMB guidance, Presidential Executive Orders and, in some instances, important provisions of the Clean Air Act. For example, the GAO report identified severe shortcomings in the technical analysis and modeling underlying the EPA's mercury rule that limits its usefulness for informing decision makers and the general public about the economic trade-offs of the two options that the EPA considered for reducing emissions. Specifically, the GAO report found that:

Because EPA estimates that regulating mercury emissions would have significant economic impacts totaling billions of dollars per year, it is important for the agency to have a credible basis for selecting a policy that will maximize the return on this investment. However, EPA's initial economic analysis of the two policies it is considering has a number of shortcomings. Specifically, because EPA did not analyze and document the economic effects of each policy option by itself—as well as in combination with the interstate rule—over their varying full implementation periods, the results cannot be meaningfully compared. In addition, EPA did not document the analysis supporting the cap-and-trade option or provide consistent information on the economic impacts of different mercury control levels for the two options, limiting the transparency and usefulness of the analysis. Further, without monetary estimates of the human health benefits of mercury emissions reductions—a primary purpose of a mercury regulation—over the full implementation period of each option or, at a minimum, a qualitative comparison of these benefits, EPA's analysis does not provide decision makers with a strong basis for comparing the net benefits under each option. Finally, because EPA did

not analyze some of the key analytical uncertainties that could affect its estimates of net benefits, the agency could enhance its economic analysis by further evaluating these uncertainties and how they could affect its overall findings (GAO Report 'Clean Air Act: Observations on EPA's Cost-Benefit Analysis of Its Mercury Control Options,' p.16) .

As you know, the EPA was permitted to delay finalizing the mercury rule this past December 15th because of widespread concerns about its inadequate technical analysis and modeling - partially for reasons described in the text above. The EPA has responded to continued criticism by promising on numerous occasions to do the technical analyses and modeling necessary to support the mercury rule. For example, upon reading a draft of the GAO report, you subsequently sent a letter to the GAO on February 15, 2005 in which you shared your frustrations about the "time and resource constraints" that hindered the EPA's ability to complete a thorough analysis, but added that the EPA would build on that work as it conducted a final benefit-cost analysis. Also in the letter, you addressed the GAO's concerns that EPA had not provided sufficient information to understand the benefits and costs of alternative approaches to reducing mercury emissions when you stated, "...EPA scientists, engineers, and economists are conducting additional analyses for the final rule, which will help address GAO's concerns."

Despite these assurances, the EPA has not publicly released any additional documents, economic analyses, or alternative scenarios that address the serious deficiencies in its original research - and there is no indication that EPA has in fact conducted the required analysis. We certainly understand that the EPA has many responsibilities, and that the Agency's budget has been significantly reduced over the last few years. However, Members of Congress first wrote to the EPA to express concern over the lack of analysis being performed as part of the mercury rulemaking process in May 2003. We do not believe that "time and resource constraints" explain the EPA's failure to properly analyze and consider a rule that addresses the toxic air pollutant of greatest concern to human health.

The EPA should be well aware of the threat that mercury poses. In January 2004, the EPA found that nearly one in six women of childbearing age has mercury levels in her blood above what is considered safe for an unborn child, doubling the previous estimates to approximately 630,000 newborns each year. Moreover, the EPA announced last August that one third of our nation's lake waters and one-quarter of our riverways are contaminated with mercury and other pollutants that could cause health problems.

The EPA has admitted that its analysis of different policy options for reducing mercury emission is inadequate. We believe this is simply unacceptable. Moreover, we find it particularly troubling that the EPA has failed to make good on promises to correct and improve its analysis necessary to issue a legally defensible regulation. The American people count on the EPA to make certain the food they eat, the water they drink, and the air they breathe is safe for their families. The integrity of the EPA and health of our communities depend on thorough and complete research.

We call on the EPA to issue a final mercury regulation based on valid, thorough, and reliable analysis of the competing proposals that will assure the public that their health will truly be protected.

Sincerely,

Tammy Baldwin

Hilda L. Solis

Diana DeGette

Raul M. Grijalva

Edward G. Markey

Jay Byrnie

Eddie Bernice Johnson

Tom Allen

Sen. Capen

Jan Schak

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Frank Pallone, Jr.

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